

Message Text

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ACTION IO-14

INFO OCT-01 ISO-00 AF-10 ARA-10 EA-10 EUR-12 NEA-10
AID-05 CEA-01 CIAE-00 COME-00 EB-08 FRB-03 INR-10
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E.O. 11652:N/A
TAGS: EGEN, ECOSOC, EINV
SUBJECT: UN WORKING GROUP ON CODE OF CONDUCT FOR TRANS-
- NATIONAL CORPORATIONS: MARCH 23-25, 1978

REF: USUN 1043

1. SUMMARY: DISCUSSIONS BASED ON ANNOTATED OUTLINE OF A
CODE FOR TRANSNATIONAL CORPORATIONS CONTINUED IN MARCH 23-
25 SESSIONS OF WORKING GROUP, AS REPORTED BELOW, AND
CONCLUDED THEIR FIRST PHASE LATE FRIDAY. THESE COVERED
ENVIRONMENT, LABOR AND EMPLOYMENT (CONCENTRATING ON
RELEVANCE OF ILO CODE), INFORMATION, NATIONALIZATION AND
COMPENSATION, AND JURISDICTION. LAST TWO SECTIONS WILL BE
REPORTED BY SEPARATE CABLE. CHAIRMAN'S (NIKLASSON-SWEDEN)
INTENTION IS TO ISSUE OVER COMING WEEKEND NEW TEXT PREPARED
BY CENTRE FOR TRANSNATIONAL CORPORATIONS (TNC) BASED ON
DISCUSSIONS THIS WEEK AND EARLIER FEBRUARY SESSION, WITH
THIS NEW TEXT TO SERVE AS BASIS FOR FURTHER WORK NEXT WEEK.
THIS NEW TEXT WILL BE TRANSMITTED TO DEPT WHEN AVAILABLE.
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END SUMMARY.

2. ENVIRONMENTAL PROTECTION (SEC. III (B)(9)). GROUP
GENERALLY AGREED WITH CHAIRMAN'S ANNOTATIONS, AND SAW
ISSUES OF BUSINESS CONFIDENTIALITY AND ANCHORING OF TNC
OBLIGATIONS TO REQUIREMENTS OF LOCAL, AND DEVELOPING INTER-
NATIONAL LAW AS ANALOGOUS TO PRECEDING SECTION ON CONSUMER

PROTECTION (REFTEL). G-77 CRITICISM OF NEED FOR BUSINESS CONFIDENTIALITY WAS BLUNTED AS IN PRIOR SECTION BY UK LINKING REQUIREMENT PRINCIPALLY TO DEVELOPMENT OF PRODUCTS AND TECHNOLOGIES, RATHER THAN CONSUMER INFORMATION ON MARKETED PRODUCTS. GROUP STRESSED NEED FOR THE COOPERATION WITH HOST GOVERNMENTS, PARTICULARLY IN PROVISION OF INFORMATION ON POLLUTION CONTROL AND ENVIRONMENTAL RESTRICTIONS IMPOSED IN OTHER JURISDICTIONS ON THE TNC'S ACTIVITIES. EMPHASIS WAS ALSO PLACED ON INTERGOVERNMENTAL COOPERATION IN ENHANCEMENT OF INTERNATIONAL STANDARDS AND EXCHANGE OF INFORMATION.

3. G-77 SAW TREND TOWARDS THE RELOCATION OF HIGHLY POLLUTING ACTIVITIES FROM DEVELOPED COUNTRIES, WHERE THEY WERE BANNED OR SEVERELY RESTRICTED, TO THE ENVIRONMENTALLY MORE UNSOPHISTICATED LDC'S. SWISS DEL SUGGESTED THAT THIS POINT RAISED THE QUESTION OF LDC COMPETITIVE ADVANTAGE IN LURING NEW INVESTMENT BECAUSE OF THEIR GREATER ENVIRONMENTAL "ABSORPTIVE CAPACITY," BUT G-77 REJECTED THIS, STRESSING NEED FOR DEVELOPMENT OF NATIONAL LEGAL SOPHISTICATION AS WELL AS INTERNATIONAL STANDARDS. MEXICAN DEL, SUPPORTED BY INDIAN, SUGGESTED ANNOTATION BE INCLUDED ON THE LIABILITY FOR DAMAGES, WITH ESTABLISHMENT OF A FUND OR OTHER COMPENSATION MECHANISM TO ENSURE TNC RESPONSIBILITY. NIKLASSON ACCEPTED REASONABLENESS OF THIS POINT, BUT HELPFULLY SUGGESTED IT BE LINKED LIMITED OFFICIAL USE

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TO NATIONAL LEGAL REQUIREMENTS.

4. US DEL MADE LANGUAGE AND SECTION IV LINKAGE SUGGESTIONS CONTAINED IN US REDRAFT OF THIS SUBSECTION PREPARED FOR OECD CONTACT GROUP. US COMMITMENT TO ENVIRONMENTAL PROTECTION STRESSED, AS A MATTER OF DOMESTIC LAW AND PRACTICE AND MULTILATERAL COOPERATION TO PROGRESSIVELY DEVELOP INTERNATIONAL LAW IN THIS FIELD. US DEL SUGGESTED ADDITION OF AN ANNOTATION IN SECTION IV, AS IN CONSUMER PROTECTION SECTION, ON GOVERNMENT PUBLICATION OF RELEVANT RESTRICTIONS AND REGULATIONS AND COMMENDED UTILITY OF AN INTERNATIONAL REGISTRY OF SUCH ACTIONS. ON MEXICAN LIABILITY PROPOSAL, US RECALLED NON-DISCRIMINATION PRINCIPLE OF SECTION IV AND NOTED THAT AN ENVIRONMENTAL FOCUS ON TNC'S ALONE WOULD BE MISPLACED, SINCE MANY HIGH-POLLUTION ACTIVITIES LIKE STEEL PRODUCTION WERE CARRIED ON BY NATIONAL ENTERPRISES.

5. RELATIONSHIP OF ILO CODE. THERE WAS A BRIEF DISCUSSION CONCERNING THE RELATIONSHIP OF THE ILO DECLARATION TO THE UN CODE. THE CHAIRMAN NOTED CERTAIN PROCEDURAL DIFFICULTIES SUCH AS THE FACT THAT THE ILO

DECLARATION WAS ADDRESSED TO WORKERS AND EMPLOYERS, NOT JUST TNCs AND GOVTS; THAT THE ILO DECLARATION MIGHT BE DISPROPORTIONATELY LONG IN RELATION TO THE UN CODE; THAT THE PREAMBLE TO THE ILO DECLARATION WENT WELL BEYOND EMPLOYMENT AND LABOR ISSUES; THAT THE ILO FOLLOW-UP PROCEDURES MIGHT NOT BE CONGRUENT WITH THE UN PROCEDURES; AND, MOST IMPORTANTLY, THAT THE ILO TEXT HAD A VOLUNTARY CHARACTER AND THAT THIS SHOULD NOT HAVE ANY IMPLICATIONS FOR THE UN CODE AS A WHOLE. HOWEVER, HE DID NOT SUGGEST THAT THESE DIFFICULTIES WERE INSURMOUNTABLE OR THAT THE GROUP SHOULD DRAFT ITS OWN SECTION ON EMPLOYMENT AND LABOR.

6. EAST GERMAN DEL STATED THAT ILO TEXT SHOULD NOT BE INCORPORATED IN UN CODE BECAUSE ILO DOCUMENT WAS TRIPAR-LIMITED OFFICIAL USE

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TITE AND BECAUSE CERTAIN GENERAL PRINCIPLES IN ILO TEXT

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WOULD BE PREJUDICIAL TO UN CODE AS A WHOLE (ESPECIALLY ILO DEFINITION OF TNC WHICH INCLUDES STATE-OWNED CORPORATIONS). HE SUGGESTED THAT WORKING GROUP FORMULATE ITS OWN TEXT OR SELECT VARIOUS PROVISIONS FROM ILO TEXT. THIS POSITION

REJECTED BY UK, NETHERLANDS AND US DEL, ALL STRESSING THAT ILO TEXT IS A BALANCED COMPROMISE AND SHOULD BE TREATED AS A WHOLE. UK NOTED THAT ILO IS THE COMPETENT ARM OF THE UN IN MATTERS RELATING TO LABOR AND THAT IT WOULD BE INAPPROPRIATE FOR YET ANOTHER ARM OF THE UN FAMILY TO DRAFT LABOR STANDARDS FOR TNCS, CREATING DUPLICATION AND CONFUSION.

7. US DEL, WHO SPOKE LAST, NOTED THAT ALTHOUGH US NO LONGER MEMBER OF ILO, THE ILO TEXT WOULD APPLY TO THE US IF IT IS INCORPORATED IN THE UN CODE. HE ALSO NOTED THAT WE WISHED TO INCORPORATE ILO DECLARATION WITHOUT REFERENCE TO A PROVISION FOR ANY ILO FOLLOW-UP MECHANISM, SINCE US WAS NOT AN ILO MEMBER. THE ISSUE OF FOLLOW-UP SHOULD BE CONSIDERED IN THE CONTEXT OF THE MECHANISM FOR THE UN CODE AS A WHOLE, WHICH WOULD BE DISCUSSED LATER.
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8. NO G-77 SPOKESMEN MADE STATEMENTS. INFORMAL CONVERSATIONS INDICATED THEY WERE CONCERNED THAT THE VOLUNTARY NATURE OF ILO DECLARATION WOULD BE PREJUDICIAL TO RESOLUTION OF THIS ISSUE FOR UN CODE AS A WHOLE, BUT DID NOT WISH TO OPENLY OPPOSE CODE THEY HAD AGREED TO. USSR DEL TOLD US PRIVATELY HE HAD SAME CONCERN, (AS WELL AS WITH DEFINITION OF TNC IN ILO CODE). ILO REPRESENTATIVE AND REPRESENTATIVES OF EMPLOYER ORGANIZATIONS LATER EXPRESSED GRATITUDE FOR US STATEMENT. WFTU OBSERVER MADE STATEMENT TO EFFECT THAT ILO DECLARATION INSPIRED BY OECD GUIDELINES AND THAT WORKING GROUP SHOULD DRAFT ITS OWN TEXT, BORROWING FROM THE ILO TEXT. ICFTU OBSERVER COUNTERED WITH STRONG STATEMENT FAVORING ADOPTION OF ILO DECLARATION AS A WHOLE. CHAIRMAN DESCRIBED DISCUSSION AS A "SOUNDING" TO ELICIT GENERAL FEELINGS AND SAID THAT WE WOULD REVERT TO THE ISSUE IN DUE COURSE.

9. INFORMATION DISCLOSURE. THERE WAS GENERAL AGREEMENT THAT SECTION WAS TIGHTLY LINKED WITH OTHER CODE SECTIONS. MOST SPEAKERS EXPRESSED SATISFACTION WITH (A) THE FORMAT SUGGESTED IN ANNOTATIONS, I.E., DISCLOSURE TO GENERAL PUBLIC, GOVTS, AND WORKER AND OTHER INTEREST GROUPS, AND (B) THE SUGGESTED LIST OF FINANCIAL AND NON-FINANCIAL DISCLOSURE ITEMS CONTAINED IN THE NIKLASSON OUTLINE. NEVERTHELESS, MANY LDC DELS FAVORED SOME ADDITIONS AND CHANGES IN LIGHT OF ACCOUNTING EXPERTS REPORT. SWEDISH DEL STRONGEST AMONG WESTERN DELS IN PRESSING FOR GREATER AND MORE DETAILED INFORMATION.

10. ATTEMPT BY INDIA TO ENTER INTO DISCUSSION OF RECENT REPORT BY UN EXPERTS GROUP ON ACCOUNTING AND REPORTING

STANDARDS WAS SUCCESSFULLY AVERTED BY US INTERVENTION
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(LATER SUPPORTED BY UK AND NETHERLANDS) THAT REPORT HAD NOT
YET BEEN ACCEPTED BY UN COMMISSION ON TRANSNATIONALS.

11. INFORMATION DISCLOSURE TO PUBLIC. DEVELOPED COUNTRIES
(US, UK, FRG, FRANCE, SWEDEN, NETHERLANDS, CANADA, JAPAN),
WHILE STRESSING LEGITIMATE NEEDS OF GENERAL PUBLIC FOR
ADEQUATE DATA ON TNCS, EXPRESSED CONCERN ABOUT PRESERVA-
TION OF BUSINESS CONFIDENTIALITY OF COMPANY SUBMISSIONS,
COST/BENEFITS OF COLLECTING AND PUBLISHING ADDITIONAL
DATA, DISCRIMINATORY REQUIREMENTS FOR DATA FROM TNCS,
REQUESTS FOR MORE INFORMATION WITHOUT CLEAR UNDERSTANDING
OF PURPOSE FOR WHICH IT WILL BE USED, AND DIFFICULTY OF
DRAWING CONCLUSIONS BASED ON NON-COMPARABLE DATA. TEST
SHOULD BE THAT TNCS SHOULD PROVIDE AS MUCH INFORMATION AS
NECESSARY TO IMPROVE PUBLIC UNDERSTANDING OF THEIR ACTIVI-
TIES AND THAT SUCH DATA SHOULD BE SUPPLEMENTAL TO THAT
REQUIRED UNDER NATIONAL LEGISLATION. BREAKDOWN BY GEO-
GRAPHICAL AREA AND MAJOR LINES OF BUSINESS SHOULD DEPEND ON
SIGNIFICANCE OF TNC IN A PARTICULAR COUNTRY OR GROUP OF
COUNTRIES. REPORTS SHOULD BE SUBMITTED AT LEAST ANNUALLY.

12. ALTHOUGH ESSENTIALLY ADHERING TO OECD GUIDELINE
PROVISIONS, SEVERAL DELEGATES (NETHERLANDS, SWEDEN)
COMMENTED THAT THERE MIGHT BE ROOM DURING 1979 OECD
GUIDELINES REVIEW FOR IMPROVEMENT AND EXPANSION TO TAKE
ACCOUNT OF NEW DEVELOPMENTS AS EVIDENCED BY TUAC SUBMIS-
SIONS TO OECD INVESTMENT COMMITTEE. SWEDEN EMPHASIZED NEED
FOR "SOCIAL ACCOUNTING REPORTS" (ALREADY SUPPLIED BY SOME
NORDIC COMPANIES) ON LABOR AND EMPLOYMENT POLICIES, INCLUD-
ING EMPLOYMENT OF INDIGENOUS LABOR AND MANAGERS, AS WELL AS
ON ENVIRONMENTAL AND CONSUMER PROTECTION.

13. DEVELOPING COUNTRIES, SUPPORTED BY SOCIALIST
COUNTRIES, INSISTED ON MAXIMUM TRANSPARENCY BY PUBLICATION
OF DISAGGREGATED INFORMATION ON INDIVIDUAL ENTERPRISE
LEVEL, DOWNPLAYING CONCERNS ABOUT BUSINESS CONFIDENTIALITY,
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COSTS, DISCRIMINATION, ETC. MEXICO SUGGESTED REPORTING

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REQUIREMENTS APPLY TO ALL TNCs REGARDLESS OF SIZE AND NATURE OF OPERATIONS AND THEY AND OTHERS CAUTIONED NOT TO LOSE SIGHT OF PRIMARY PURPOSE OF INFORMATION DISCLOSURE, NAMELY, TO ENABLE TNC REGULATION AND CONTROL BY HOST GOVTS. USSR, SUBSEQUENTLY SUPPORTED BY GERMAN DEMOCRATIC REPUBLIC, SOUGHT TO RIDICULE CONCERNS THAT TNCs MIGHT BE PUT AT COMPETITIVE DISADVANTAGE BECAUSE OF DISCRIMINATORY REQUIREMENTS. ADVOCATED THAT ANNOTATIONS DROP QUALIFICATIONS RELATING TO BUSINESS CONFIDENTIALITY, COST AND EFFECTS ON COMPETITIVE POSITION AND KEEP STRONG LANGUAGE "TELLING" TNCs TO PROVIDE INFORMATION ON LIST OF STIPULATED ITEMS.

14. IN SUMMING UP DISCUSSION, CHAIRMAN MADE FOLLOWING OBSERVATIONS:

- ANNOTATION ON INFORMATION DISCLOSURE TO PUBLIC MUST REFER TO NEED TO PRESERVE BUSINESS CONFIDENTIALITY. ALTERNATIVELY, ISSUE COULD BE TAKEN INTO ACCOUNT IN SELECTING ITEMS ON WHICH TNCs WOULD BE REQUIRED TO REPORT.
 - NON-DISCRIMINATION: LOCAL REPORTING STANDARDS SHOULD APPLY TO BOTH TNCs AND NATIONAL COMPANIES. TNCs SHOULD NOT
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BE REQUIRED TO PROVIDE INFORMATION NOT REQUIRED FROM OTHER COMPANIES EXCEPT IN AREAS WHERE THEIR OPERATIONS DIFFER FROM THOSE OF DOMESTIC FIRMS.

- SIZE OF REPORTING ENTITY: DISCUSSION OF THIS ISSUE WAS INCONCLUSIVE AND NEEDS FURTHER CONSIDERATION OF UNDERLYING CRITERIA, E.G., TURNOVER, EMPLOYEES. CHAIRMAN SUGGESTED APPROPRIATENESS OF LANGUAGE ALONG LINES OF OECD GUIDELINES.

- DISCLOSURE OF FINANCIAL AND NON-FINANCIAL DATA: MANY DELEGATES STRESSED DESIRABILITY IN PUBLIC INTEREST OF HAVING MORE NON-FINANCIAL INFORMATION THAN IS PRESENTLY AVAILABLE, INCLUDING STRUCTURE OF FIRM, DEGREE OF OWNERSHIP, LINKAGE AMONG ENTITIES, ETC. REFERENCE WAS MADE TO OECD CODE AND UN EXPERTS RECOMMENDATIONS.

15. INFORMATION TO GOVTS. THIS ANNOTATION SEEMED TO PRESENT MORE PROBLEMS THAN PRECEDING ONE ON DISCLOSURE TO PUBLIC. NEVERTHELESS, THERE WAS BROAD AGREEMENT THAT FOREIGN-OWNED AFFILIATES SHOULD PROVIDE GOVTS WITH INFORMATION THEY NEED FOR ADMINISTRATIVE, LEGISLATIVE, STATISTICAL OR OTHER LEGITIMATE PURPOSES. ALSO, TNCs SHOULD SUPPLY INFORMATION TO AFFILIATES WHEN LOCAL ENTITIES UNABLE TO MEET HOST GOVT DEMANDS. DISCUSSION CENTERED ON TYPES OF INFORMATION TO BE FURNISHED, SIZE AND NATURE OF COMPANIES TO BE INCLUDED, CONFIDENTIALITY, FREQUENCY OF SUBMISSIONS, AND INFORMATION EXCHANGE ON TNCs AMONG GOVERNMENTS.

- TYPES OF INFORMATION: SEVERAL DELEGATES CITED INTEREST NOT ONLY IN HISTORICAL DATA, BUT ALSO INFORMATION ON FUTURE COMPANY POLICIES AND PLANS AFFECTING HOST-COUNTRY LIMITED OFFICIAL USE

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ECONOMIC GOALS. OTHERS STRESSED IMPORTANCE OF SELECTIVITY IN REQUESTS TO KEEP DOWN COST OF COLLECTING, ANALYZING AND SUBMITTING DATA (US, SWEDEN, ITALY, INDIA). US REP ASKED FOR CLARIFICATION OF DRAFT PROVISION THAT TNCs INCLUDE INFORMATION ON "THAT WHICH IS HELD IN OTHER COUNTRIES." EXPLANATION BY CHAIR THAT STANDARD WOULD REQUIRE TNCs "WHEREVER THEY OPERATE" TO ASSIST AFFILIATES IN OTHER COUNTRIES IN MEETING DEMANDS OF GOVERNMENTS, CAUSED CONSIDERABLE DIFFICULTIES WITH SOME DELEGATIONS, AMONG THEM CANADA AND FRANCE. UK SAID IT COULD ENVISION INSTANCES WHERE GOVERNMENTS MIGHT NEED INFORMATION FROM FIRMS IN OTHER COUNTRIES (ENVIRONMENTAL IMPACT STATEMENTS). CHAIRMAN SUGGESTED REFERENCE BE KEPT, BUT THAT IT BE BALANCED BY REFERENCE TO RELEVANCE OF NATIONAL LEGISLATION.

- NATURE OF COMPANIES: SWITZERLAND CAUTIONED THAT PROPOSALS BY DEVELOPING AND OTHER COUNTRIES TO STRESS DISCLOSURE ON SMALLEST POSSIBLE DENOMINATION, I.E. COMPANY

LEVEL, MAY DEFEAT PURPOSES OF CODE. JAPAN URGED INCLUSION OF ALL FIRMS, REGARDLESS OF SIZE AND NATURE, SINCE SMALL AND MEDIUM-SIZED COMPANIES, IN PARTICULAR, HAVE OFTEN BEEN WORST OFFENDERS.

- BUSINESS CONFIDENTIALITY: MOST SPEAKERS SUPPORTED CONFIDENTIALITY OF PROPRIETARY DATA, ALTHOUGH SOME FEARED COMPANIES MIGHT USE CONFIDENTIALITY AS EXCUSE FOR WITHHOLDING INFORMATION. US DEL CONSIDERED CONFIDENTIALITY NOT NECESSARILY A LIMITATION TO, BUT RATHER A BASIS ON WHICH INFORMATION COULD BE PROVIDED. FEELING WAS EXPRESSED THAT IT MUST NOT BE LEFT TO TNCs TO DECIDE WHICH DATA WERE SO CONFIDENTIAL THAT THEY COULD NOT BE HANDED TO GOVERNMENTS. RATHER IT SHOULD BE RESPONSIBILITY OF GOVERNMENTS

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TO SEE TO IT THAT CRITICAL INFORMATION REMAINS
CONFIDENTIAL (UK). REFERENCE TO THIS OBLIGATION WILL BE
INCLUDED IN SECTION IV.

- FREQUENCY OF SUBMISSIONS: DISAGREEMENT DEVELOPED OVER QUESTION WHETHER DATA SHOULD BE PROVIDED ON "AUTOMATIC" BASIS OR ON GOVT REQUEST. MAJORITY OF SPEAKERS, INCLUDING CHAIRMAN, FAVORED "ON-REQUEST" SOLUTION, NOTING THAT FIRMS COULD NOT FORESEE AND ASSESS BEFOREHAND SPECIAL NEEDS OF GOVTS. NIGERIA (SPEAKING FOR AFRICAN GROUP) SUGGESTED MINIMUM LIST OF DISCLOSURE ITEMS AND FREQUENCY AS RECOMMENDED BY ACCOUNTING EXPERTS.

- INFORMATION EXCHANGE BETWEEN GOVTS: SEVERAL DELS
STRESSED NEED FOR INTERGOVERNMENTAL INFORMATION EXCHANGE
ON TNCS. REFERENCE TO THAT EFFECT WILL BE MADE IN SECTION
IV. SWITZERLAND WARNED OF LACK OF COMPARABILITY OF DATA
FROM COUNTRY TO COUNTRY AND, MOST IMPORTANTLY, EXCHANGES
MAY THREATEN CONFIDENTIALITY OF INFORMATION PROVIDED.

16. INFORMATION TO EMPLOYEE REPRESENTATIVES.

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EXAMINATION OF THIS ANNOTATION WAS POSTPONED PENDING
COMPLETION OF SUBSTANTIVE DISCUSSION OF EMPLOYMENT AND
LABOR SECTION (III,B,7). LEONARD

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Message Attributes

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